

## Chapter VI

## Legislative Sessions

The First Legislature <sup>1</sup>***The Members***

The First California Constitutional Legislature, consisting of 16 Senators and 36 Assemblymen, proposed to meet in San Jose on December 15, 1849. The winter, however, had been unusually inclement, with a rainfall of nearly 36 inches for the season. The rains began on the night of October 28th, and by the 15th of December, the roads were so muddy that only six Senators and 14 Members of the Assembly were present for the opening day of session.<sup>2</sup> By the following Monday, December 17th, a quorum had arrived, and the Legislature began its deliberations.

The records of the First Legislature reveal that much difficulty was encountered in securing quorums. The Speaker of the Assembly resigned during his term, as did two Senators and three Assemblymen; the records indicate that one Assemblyman never officially attended the session. Many members were absent most of the time, indicating that there was no great importance placed upon political positions or politics.

The great gold rush of 1849 lured fortune seekers from all over the globe and from all walks of life to the gold fields. The composition of the First Legislature reflects this immigration, as many of the members had but recently arrived in California and, so far as is known, not a single member of the first Assembly was a native-born Californian. The first Assembly was comprised of 19 members from northern states, 10 members from southern states, five members whose birthplace is unknown, and two members who were of foreign birth. The first Senate was composed of nine members from northern states, five members from southern states, and but two members who were native Californians.

Another indication of the gold rush influx upon the composition of the First Legislature is the fact that exactly one-half of the Members of the Senate (eight Senators) and one-half of the Members of the Assembly (18 Assemblymen) represented the mining areas of the Sacramento and San Joaquin Districts.

***The First Laws***

The First Legislature adopted 19 joint resolutions, and of the bills passed at the first session, 146 were approved by the Governor.

Hon. Peter H. Burnett, the newly elected Governor who was inaugurated on December 20, 1849, sent a message to the Legislature raising the question of the advisability of enacting laws before

<sup>1</sup> For a more complete discussion of California's First Legislature see Bancroft's *History of California*, VI: Cardinal Goodwin, *The Establishment of State Government in California: California's State Capital*—2d Edition—Issued by State Department of Finance, 1956; and *The First Legislature of California* by Senator Herbert C. Jones before the California Historical Society, San Jose, December 10, 1949.

<sup>2</sup> *Journals of the Senate and Assembly*, December 15, 1849, pp. 3, 575.

Congress had passed the bill making California a state.<sup>3</sup> Apparently precedent for the commencement of governmental operations before the admission of a state existed, for the Legislature proceeded with the enactment of the necessary laws.

One of the problems of the First Legislature was the division of California into counties. The Senate Committee on County Boundaries was assigned this task, and recommended that California be divided into 18 counties. Many areas, however, objected to being included in the counties proposed by the committee, and desired to establish counties of their own. The Legislature, on February 18, 1850, passed a bill subdividing California into 27 counties.<sup>4</sup> As set forth in the bill, the counties were:

- |                             |                |                  |
|-----------------------------|----------------|------------------|
| 1. San Diego                | 10. Marin      | 19. Yuba         |
| 2. Los Angeles              | 11. Sonoma     | 20. Butte        |
| 3. Santa Barbara            | 12. Solano     | 21. Colusi [sic] |
| 4. San Luis Obispo          | 13. Yolo       | 22. Shasta       |
| 5. Monterey                 | 14. Napa       | 23. Trinity      |
| 6. Branciforte <sup>5</sup> | 15. Mendocino  | 24. Calaveras    |
| 7. San Francisco            | 16. Sacramento | 25. San Joaquin  |
| 8. Santa Clara              | 17. El Dorado  | 26. Tuolumne     |
| 9. Contra Costa             | 18. Sutter     | 27. Mariposa     |

Other legislation of historical significance passed by the First Legislature included: an act creating the office of State Translator, whose duty was to translate laws and documents into Spanish;<sup>6</sup> an act setting the annual salaries of the Governor (\$10,000), Secretary of State (\$7,000), Comptroller (\$8,000), Treasurer (\$9,000), Attorney General (\$7,000), Surveyor General (\$7,500), Justices of the Supreme Court (\$10,000), State Translator (\$8,000), District Attorneys (\$2,000), and Governor's Private Secretary (\$2,000);<sup>7</sup> an act providing for the incorporation of cities;<sup>8</sup> acts providing for property taxes (levied at the rate of 50 cents on each \$100 of taxable property) and poll taxes (levied at the rate of \$5 per person on every male inhabitant over 21 and under 50 years of age);<sup>9</sup> an act adopting the English Common Law, so far as it was not inconsistent with the United States Constitution or the Constitution and laws of California, as the rule of decision in California courts;<sup>10</sup> an act providing that the acts of the Legislature would go into immediate effect unless another time was expressly stated in the bill;<sup>11</sup> and an act abolishing all laws then in force in California except those passed by the First Legislature.<sup>12</sup>

The tempers of many of the Members of the First Legislature were roused over the delay in Congress to accept the admission of

<sup>3</sup> *Message of Governor Peter H. Burnett to the Legislature, Journal of the Senate* for December 21, 1849, pp. 31–32.

<sup>4</sup> *Statutes of 1850*, Chapter 15. Some of the county names proposed in the original Report of the Senate Committee on County Boundaries were changed by the bill. For instance, Oro was changed to Tuolumne, Mount Diablo to Contra Costa, Benicia to Solano, Fremont to Yolo and Redding to Shasta. See *Journals of the Senate and Assembly, 1849–50, Appendices E and F*, and *Journal of the Assembly*, February 12, 1850, p. 839. There are now 58 counties in California.

<sup>5</sup> *Statutes of 1850*, Chapter 61, changed the name of Branciforte County to Santa Cruz County.

<sup>6</sup> *Statutes of 1850*, Chapter 8.

<sup>7</sup> *Statutes of 1850*, Chapter 25.

<sup>8</sup> *Statutes of 1850*, Chapter 30.

<sup>9</sup> *Statutes of 1850*, Chapters 17, 52.

<sup>10</sup> *Statutes of 1850*, Chapter 95.

<sup>11</sup> *Statutes of 1850*, Chapter 7. The current provisions of the California Constitution are just the opposite—no act will go into immediate effect except acts calling elections, providing for tax levies or appropriations for the usual and current expenses of the state, unless the act itself states that it is to go into immediate effect.

<sup>12</sup> *Statutes of 1850*, Chapter 125.

California. Before adjourning, a committee of three members of each house drew up a terse "address by the people of California to the citizens of the United States on the application of California for admission into the Union." Although this address was refused acceptance by the Assembly, the following quotation therefrom may be of interest:

"Yet, whatever be the fate of our prayer, we will not despair, nor will the continued neglect of Congress shake our attachment to our country or love for our countrymen. . . . we will not attempt any supplication—we need not—we would not. But we have one request which, we beg, will be deliberately and patriotically considered, that is to say, should Congress refuse to admit California as a state into the Union, we pray that their action will cease with the refusal, and that, as heretofore, they will neglect to pass any law for the benefit of California. Upon the happening of this event, we will not further ask the attention of Congress to our interests, and beg that our wishes will be considered as embodied in a simple request contained in three words, '*Let us alone.*'" <sup>13</sup>

News of the admission of California into the Union reached San Francisco on October 18, 1850, months after the adjournment of the First Legislature, which adjourned on April 22, 1850, having been in session a little more than four months.

## Sessions of the Legislature

### **Sessions—1849–1946**

From 1849 until 1862, the Constitution provided that the Legislature meet annually on the first Monday of January. Terms of office for members were set at one year for Assemblymen and at two years for Senators, with one-half of the membership of the Senate being elected each year.

In 1862, the Constitution was amended to provide for biennial sessions, the Legislature meeting on the first Monday in December following the election of its members. No session was to continue longer than 120 days, and the terms of office for members were extended to two years for Assemblymen, and to four years for Senators. The Senators were again divided so that one-half would be elected each two years.

The Constitution of 1879 continued the biennial sessions, but changed the meeting date to the first Monday after the first day of January in the odd-numbered years, and removed the 120-day limitation on the length of the session.

An amendment to the Constitution, adopted on October 10, 1911, provided that the biennial sessions commence at 12 m., on the first Monday after the first day of January in the odd-numbered years, and continue for a period of not to exceed 30 calendar days; whereupon a recess of both houses for not less than 30 calendar days was required to be taken.

<sup>13</sup> *Journal of the Assembly*, April 22, 1850, p. 1283

This session was known as a bifurcated session, so-called because there was an interim between the first and second parts of the session. The interim was known as the constitutional recess.

Upon the reassembling of the Legislature after the recess, no bill could be introduced in either house without the consent of three-fourths of the members thereof, nor could more than two bills be introduced by any one member after such reassembling.

The January session was devoted almost exclusively to the introduction of bills, upon which there was no limit; and few measures, except those of an urgent nature, were passed. When the Legislature reconvened after the constitutional recess, it immediately proceeded to consider the bills which were introduced before the recess.

#### ***Sessions—1947–1966 (General and Budget)***

On November 5, 1946, the people adopted an amendment to Article IV, Section 2, of the Constitution which again provided for annual sessions, instead of biennial sessions. Annual sessions in the odd-numbered years were to be known as general sessions, and annual sessions in the even-numbered years were to be known as budget sessions.

The 1946 amendment provided that the general sessions, held in the odd-numbered years, be the same as the biennial sessions previously held in the odd-numbered years, that is, they were bifurcated, with a 30-day period for bill introduction, followed by a 30-day recess before reconvening to consider the legislation previously introduced.

There was no limitation on the length of the general session after the constitutional recess until 1949, when the Constitution was amended to restrict the length of general sessions to 120 calendar days, exclusive of the constitutional recess.

At the 1958 general election, the people adopted another amendment to Article IV, Section 2, of the Constitution. This amendment abolished the constitutional recess and permitted a general session of not more than 120 calendar days in duration, not including Saturdays and Sundays. This, in effect, meant that the session could last as long as 166 days, as there are 46 intervening Saturdays and Sundays. It might be interesting to note that every general session held under this provision, though not required to continue for 166 days, never adjourned before the 166th day.<sup>14</sup>

This amendment also provided that at the general session no bill other than the Budget Bill could be heard by any committee or acted upon by the house until 30 calendar days had elapsed following the date the bill was first introduced, unless three-fourths of the members of the house authorized dispensing with this provision.

The 1946 amendment to the Constitution provided that the regular budget sessions should convene at 12 m. on the first Monday in March of the even-numbered years. In 1949, the budget sessions were restricted to a length of 30 calendar days, and to consideration of the

<sup>14</sup> See final day's *Journal of the Assembly* for the sessions of 1959, 1961, 1963, 1965.

Budget Bill for the succeeding fiscal year, revenue acts necessary therefor, the approval or rejection of charters and charter amendments of cities, counties, and cities and counties, and acts necessary to provide for the expenses of the session.

On November 6, 1956, subdivision (c) was added to Section 2 of Article IV of the Constitution, changing the meeting date of the budget session to 12 m. on the first Monday in February, and providing that, after the Budget Bill had been introduced at a budget session, a recess of both houses could be taken for a period of not to exceed 30 calendar days. The length of the session, exclusive of such recess, was still restricted to 30 calendar days.

The 1958 Budget Session was the first to operate under the provisions of the 1956 amendment. The Legislature met on February 3, 1958; recessed the next day, February 4, reconvened on March 3, and adjourned *sine die* March 30, 1958. The Legislature was in session for a total of 30 calendar days, the maximum number of days allowed by the Constitution.

Operating under this provision of the Constitution, the Legislature succeeded on only one occasion, in 1960, in passing the Budget Bill during the allotted time. In 1958, 1962, 1964, and 1966, the Legislature was required to adjourn on the completion of the 30-day period provided by the Constitution, having failed to enact the Budget Bill. In each instance, the Governor was required to call a special session to enable the Legislature to enact a Budget Bill.<sup>15</sup>

### **Sessions 1967–1972 (Annual)**

In 1966 the people of the State of California adopted a constitutional amendment revising the legislative article of the Constitution (Article IV) in its entirety. This amendment required the Legislature to meet each year in regular session, convening at 12 m. on the first Monday after January 1. The sessions were of unlimited length, and there was no restriction on the type of bills that could be introduced. In addition, the amendment provided that upon the completion of its work, the Legislature would recess for at least 30 days, then reconvene and reconsider any bills vetoed by the Governor. In effect this amendment abolished the budget session and eliminated the time restriction (120 days exclusive of Saturdays and Sundays), which formerly governed legislative sessions in California.

In 1971 the Legislature met on January 4, the first Monday after January 1, and did not adjourn until 364 days later, on January 3, 1972.

The 1972 Regular Session convened January 3, 1972, and adjourned January 5, 1973, a total of 369 calendar days.<sup>16</sup>

<sup>15</sup> When the Legislature failed to enact the Budget Bill during the 1958 Budget Session, there was some question as to whether or not the Governor could call the Legislature into special session to consider the budget. However, an opinion of the Legislative Counsel indicated that it would be proper to consider the Budget Bill in a special session if the Legislature failed to enact a budget during the regular budget session. *Opinions of the Legislative Counsel* (No. 2315), *Journal of the Assembly*, 1958, *Regular Budget Session*, March 27, 1958, pp. 454–495.

<sup>16</sup> *Journals of the Assembly and Senate*, 1972 Regular Session.

**Sessions 1973–Present—(Biennial)**

The Legislature currently meets in a two-year session as a result of a constitutional amendment adopted in 1972. The Legislature convenes on the first Monday in December of the even-numbered years (e.g., December 5, 1994) and must adjourn by midnight November 30 of the following even-numbered year (e.g., November 30, 1996).<sup>17</sup> The first biennial session (1973–1974) saw the Legislature adjourn on September 1, 1974, well in advance of the constitutional deadline. This practice has been followed in each successive biennium and is likely to continue because another section of the Constitution limits the Legislature to the consideration of Governor's vetoes and urgency statutes, statutes calling elections, appropriations for the usual and current expenses of the state and statutes levying taxes after August 31st of the even-numbered year.<sup>18</sup>

This type of session is similar to the one employed by the United States Congress which also meets in a two-year session.

**Extraordinary Sessions**

The Constitution provides that the Governor may call the Legislature into special session by proclamation. The proclamation contains certain subjects, and the Legislature's consideration is limited to the subjects specified, but it may provide for the expenses and other matters incidental to the session.<sup>19</sup>

With respect to the question of what measures may be considered under an item of the Governor's Proclamation convening the Legislature in extraordinary session, the California Supreme Court has stated as follows:<sup>20</sup>

" . . . The duty of the Legislature in special session to confine itself to the subject matter of the call is of course mandatory. It has no power to legislate on any subject not specified in the proclamation. . . . But when the Governor has submitted a subject to the Legislature, the designation of that subject opens for legislative consideration matters relating to, germane to and having a natural connection with the subject proper. . . . Any matter of restriction or limitation becomes advisory or recommendatory only and not binding on the Legislature. . . ."

While the Governor controls the subject matter of legislation which may be considered during an extraordinary session, what is embraced in the subject as designated by the Governor is to be given a broad interpretation. The Legislature may consider matters germane or relating to or those having a natural connection with the subject contained in the proclamation.<sup>21</sup>

<sup>17</sup> *Constitution*, Article IV, Section 3.

<sup>18</sup> *Constitution*, Article IV, Section 10(c). A separate section required the Legislature to convene its first biennial session (i.e., 1973–74 Regular Session) on January 8, 1973. All succeeding sessions, however, are convened in December of the even-numbered year, e.g., December 1994, December 1996, etc.

<sup>19</sup> *Constitution*, Article IV, Section 3(b). Note: In California the Governor must convene both houses of the Legislature; however, the President of the United States may convene either or both houses of Congress. *United States Constitution*, Article II, Section 3.

<sup>20</sup> *Martin v. Riley*, 20 Cal. 2d 28.

<sup>21</sup> *Opinion of Legislative Counsel* (No. 2105), *Journal of the Assembly*, 1960 (Second Extraordinary Session), March 2, 1960, p. 13; see also *Opinion of Legislative Counsel* at p. 124, and *Opinion of the Attorney General* at p. 125, *Journal of the Assembly*, 52d Session (1st Extraordinary Session), March 11, 1938.

Extraordinary sessions were formerly called to enact legislation to meet unusual conditions which had arisen since the adjournment of the last regular session. The possibility of an extraordinary session was increased during the even-numbered budget session year as the Constitution restricted the Legislature to consideration of the Budget Bill, revenue bills, city and county charters, and acts providing for the expenses of the session. In order to enact legislation on any other subject during the budget year, the Legislature had to be called into extraordinary session. With the adoption of the constitutional amendment in 1966 abolishing the budget session, it was felt that there would be a reduction in the number of extraordinary sessions, as the Legislature could act on any type of legislation each year. However, the short experience under this provision indicates that this hope failed to materialize as in 1967, 1968, and 1971 the Governor called the Legislature into extraordinary sessions.

Now that the Legislature meets almost continuously it would seem that the only need for a special session would be to enact legislation which may not be enacted by urgency legislation during the regular session, e.g., change salaries, change the term of or create a new office, etc.<sup>22</sup> In these cases the extraordinary session could be advantageous as the bills become effective the 91st day after the adjournment of the extraordinary session as opposed to January 1 following the enactment of the bill as is the case in the regular session.<sup>23</sup>

The hope that the biennial session would reduce the use of the extraordinary session device has not been realized. The Legislature has met in extraordinary session on 15 occasions since 1973. Of these 15 separate extraordinary sessions, several were convened during a single legislative session (e.g., in the 1975–76 session, three separate special sessions were convened). In fact, since 1973, the only time the Legislature has not met in special session was the 1979–80 session.<sup>24</sup>

The current Joint Rules identify the regular session with the odd-numbered year following the general election followed by a hyphen and the last two digits of the next even-numbered year. For example, the next regular session of the Legislature will convene December 5, 1994, and adjourn *sine die* at midnight, November 30, 1996, and will be designated the 1995–96 Regular Session. Special sessions will be similarly identified, i.e., 1995–96 First Extraordinary Session.<sup>25</sup>

### ***Length of Extraordinary Sessions***

Since the First Regular Session of the Legislature in 1849, California's various Governors have called the Legislature into extraordinary session on 73 different occasions—55 of which have been called since 1940. In the first half century of California's legislative history, there were but three special sessions called, but since the beginning of this century, 70 such sessions have been called.

<sup>22</sup> *Constitution*, Article IV, Section 8(d).

<sup>23</sup> *Constitution*, Article IV, Section 8(c).

<sup>24</sup> See *Appendix A*, *infra*, p. 183.

<sup>25</sup> *Joint Rules*, 39, 50.

From 1914 to 1918, during World War I, only one extraordinary session of the Legislature was called. In sharp contrast, World War II, with its tremendous problems, both immediate and future, caused the Legislature to be called into six extra sessions between December 8, 1941, when the United States entered the war, and "V-J Day" in 1945.

The first time California's Legislature met in extraordinary session was on April 4, 1881, when Governor George C. Perkins issued a call to the 24th Legislature. The session lasted for 40 calendar days.

The longest special session was the First Extraordinary Session of the 53rd Legislature held in 1940, which met on January 29 and adjourned *sine die* on December 5 of that year, making a total of 312 calendar days. However, this session was at recess three times—from February 25 to May 13; from May 24 to September 21; and from September 22 to December 2, for a total of 266 calendar days—so it was in actual session only 46 calendar days.

The greatest number of extraordinary sessions ever held during one year was in 1940, when the 53rd Legislature met five times in special session. The 55th Legislature was called into special session four times, twice in 1943, and twice in 1944, and the Legislature was called into special session three times in 1950, 1962 and 1975.

When two or more sessions run concurrently, as, for instance, a regular session and an extraordinary session or two or more special sessions, each is separate and distinct from the other, requiring its own organization and election of officers.<sup>26</sup>

The five special sessions of 1940, some of which for a time ran concurrently, necessitated a division of the legislative day. During this period, at the time appointed, each of the sessions was called to order, the roll was called, the prayer was offered by the Chaplain, and all organizational matters were performed. At the conclusion of its "Order of Business," the daily session was adjourned, and the next extraordinary session was immediately called to order. This procedure, requiring as it did, five separate publications of the Journal, History, and File (which, in order to properly identify the sessions, were printed in different colors of ink for each session: black, brown, blue, green, and purple) was found to be so expensive and confusing that a policy was adopted under which the Governor, instead of issuing a new call for each new item, could add items to the original call.<sup>27</sup>

The right of the Governor to supplement, augment, or amend his proclamation convening the Legislature in extraordinary session has been discussed at length by both the Attorney General and the Legislative Counsel.<sup>28</sup>

However, the custom of adding to the Governor's agenda after the Legislature has been convened in extraordinary session has been in

<sup>26</sup> See Chapter VIII, *infra*, p. 83.

<sup>27</sup> For a listing of the regular and extraordinary sessions of the California Legislature, see *Appendix A, infra*, p. 183.

<sup>28</sup> 4 *Op. Att'y Gen.* 58 and *Opinion of Legislative Counsel, Journal of the Assembly, 52d Session (1st Extraordinary Session)*, March 11, 1938, pp. 126-129.



existence for many years. This practice has never been challenged and has been accepted as part of the legislative process.

At the First Extraordinary Session of 1958, which ran concurrently with the budget session, the Governor originally requested legislation on 28 items. The Governor on several occasions added to this call until the Legislature was requested to enact legislation on 51 different subjects.

At midnight on March 30, 1958, the 30 calendar days allowed by the Constitution for the budget session expired before an agreement between the two houses was reached on the Budget Bill. The Governor immediately called the Legislature into the Second Extraordinary Session for the purpose of considering and acting upon the budget. As previously discussed, this device has been used on numerous occasions to enact a budget when the Legislature failed to adopt one during a regular session.<sup>29</sup>

In 1960, the proclamation convening the First Extraordinary Session contained only one item to be legislated upon. Six subsequent amendments and supplements by the Governor brought the total of subject matter items upon which the Legislature could enact legislation to 40. This session ran concurrently with the budget session. Since then, as many as 68 different subject matters have been included in the Governor's proclamation calling for an extraordinary session (1966 First Extraordinary Session).<sup>30</sup>

### Designation of Sessions

From 1849 until 1947, legislative sessions were designated by number, as, for instance, the 1849 session of the Legislature was designated as the First Session and the First Legislature, and the 1945 session was the 56th Session and the 56th Legislature.

Until 1948, the number of regular sessions and the number of Legislatures were the same. This was due to the fact that, when the early day annual sessions were held (1849–1863), the Members of the Assembly were elected for one-year terms and the Senators for two-year terms; and, when the Constitution was amended to provide for biennial sessions, the terms of the Assembly Members and Senators were changed to two and four years, respectively. Thus, there was a new Legislature at each regular session.

From 1947 through 1972, regular sessions were held annually, thus there were two legislative sessions held before the election of the next Legislature. The result, of course, was that the number of sessions began to exceed the number of Legislatures. In 1973, California reverted to the biennial session, restoring the one session to one legislature ratio.

In order to avoid some of the confusion resulting from the various types of sessions used in California, the sessions held from 1849 to 1947 are referred to by the *number* of the session, e.g., 56th Session (1945); those held from 1947 through 1972 are identified by the *year*

<sup>29</sup> *Journal of the Assembly*, 1966 Regular Session, p. 272.

<sup>30</sup> *Journal of the Assembly*, 1966 First Extraordinary Session, p. 1445.

in which they were held, e.g., 1947 Regular Session; while the present session is designated by the *years* in which it is held, e.g., 1993–94 Regular Session.

### **War- or Enemy-caused Disaster Sessions**

The Constitution provides that in the event of an enemy- or war-caused disaster the Legislature is authorized to convene itself in session. It may also provide for elections to fill vacancies occurring in the office of Governor or any other elective office provided for under the Constitution. Should one-fifth of the members of either house be killed, missing or disabled, the remaining Members of the Legislature are authorized to fill these vacancies. In addition, they may also provide for a temporary seat of government. While in session, the Legislature may act upon any subject that is designed to relieve or alleviate the consequences of the disaster or enact any measures to continue and restore a stable government.<sup>31</sup>

<sup>31</sup> *Constitution*, Article IV, Section 21; *Government Code*, Section 9036.

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1992 Court Ordered Reapportionment Map  
Assembly Districts